

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN POTTS,

Petitioner,

v.

J. GASTELO,

Respondent.

Case No. 1:20-cv-01236-NONE-HBK

ORDER DENYING PETITIONER'S MOTION  
FOR AN EVIDENTIARY HEARING

(Doc. No. 10)

Petitioner Kevin Potts, a state prisoner proceeding *pro se*, initiated this action on September 2, 2020 by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). On September 6, 2020, Petitioner filed the instant motion, which the Court construes as requesting an evidentiary hearing.<sup>1</sup> (Doc. No. 10). The Court has not yet directed respondent to respond to the petition.

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<sup>1</sup> Petitioner captioned a previous pleading as a “Request for Evidentiary Hearing.” (*See* Doc. No. 2). Because Petitioner requested only appointment of counsel in the body of that pleading, the Court construed that pleading as a motion for appointment of counsel. (*See* Doc. No. 14). Petitioner similarly captions this motion as a “Request for Evidentiary Hearing” and “Notice of Motion and Motion to Lodge Additional Information in Support of Habeas Petition; Supporting Points and Authorities.” (Doc. No. 10 at 1). Having reviewed the body of the motion, the Court does not construe the instant motion as including a request to amend the petition. The Court notes that Petitioner did separately file a Motion to Amend on December 4, 2020. (Doc. No. 12). The Court will address petitioner’s request to amend his petition in a separate order. Petitioner is cautioned for future motions to only title his motion for the type of relief he requests in the body of the motion.

1 An evidentiary hearing in a habeas proceeding is granted only under limited circumstances.  
2 See 28 U.S.C. § 2254(e)(2)(A)(ii). Because no response to the petition has yet been filed, it is  
3 premature to hold an evidentiary hearing. See Rules Governing Section 2254 Cases, R. 8(a).

4 Accordingly, petitioner's motion for an evidentiary hearing (Doc. No. 10) is **DENIED**  
5 **without prejudice as premature.**

6 IT IS SO ORDERED.  
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8 Dated: December 11, 2020

  
9 HELENA M. BARCH-KUCHTA  
10 UNITED STATES MAGISTRATE JUDGE

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